



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 20 OF 2018

(Before Hon. Justice Mathews N. Nduma)

JOB MADEDE.....CLAIMANT

VERSUS

ACACIA VENTURES LIMITED.....RESPONDENT

J U D G M E N T

1. The Claimant seeks compensation for unlawful an unfair termination of employment and payment of terminal benefits set out in the statement of claim filed on 18th January, 2018 as follows:-
 - a. One month salary in lieu of notice.
 - b. Arrear salary for October and November, 2017.
 - c. 14 days leave and certificate of service.
2. The statement of claim was served and the Respondent filed notice to enter appearance on 9th February, 2018.
3. The Respondent however did not file statement of defence to the suit.
4. The claim is therefore undefended.
5. The Claimant testified under oath in support of the reliefs sought and relied on documents marked J.M. '1' to J.M. '10' produced as exhibits in the suit.
6. The court finds that the following claims have been proved on a balance of probability and judgment entered in favour of the Claimant as against the Respondent –
 - a. Kshs.170,000 in lieu of one month notice not given.
 - b. Kshs.294,667 being arrear salary for the months of October.
 - c. Kshs.79,333 in lieu of 14 days leave not taken.
7. The claim for quota appraisal for 1st and 2nd quota was not sufficiently proved and is dismissed.

Compensation

8. With regard to the claim for compensation for unlawful and unfair termination of employment, the court is satisfied that the termination of the employment of the Claimant by an email dated 22nd November, 2017 was not preceded by a notice to show cause or a proper disciplinary hearing. The termination was not for a valid reason and was not effected in terms of a fair procedure.

9. The Claimant has proved on a balance of probability that Respondent violated sections 41, 43 and 45 of the Employment Act. The Claimant is entitled to compensation in terms of section 49(1) (c) and (4) of the Act.

10. The Claimant held a Senior position of Finance Manager and doubled up as General Manager. The claimant earned a monthly salary of Kshs.170,000. The Claimant wished to continue serving the Respondent but lost his job without notice and without payment of any terminal benefits including salary for days worked.

11. The claimant suffered loss and damage and did not contribute to the unlawful termination. The Claimant had served the Respondent for about eleven (11) months. The court awards the Claimant the equivalent of one (1) month salary in compensation for the unlawful dismissal in the sum of Kshs.170,000.

12. In the final analysis judgment is entered in favour of the Claimant as against the Respondent as follows:-

(a) Kshs.170,000 being the equivalent of one month salary in compensation.

(b) Kshs.170,000 in lieu of one month notice.

(c) Kshs.294,667 arrear salary for October and November, 2017.

(d) Kshs.79,333 in lieu of 14 days leave.

Total award Kshs.714,000.

(e) Respondent to provide the Claimant with certificate of service within 30 days.

(f) Interest at court rates from date of judgment in respect of (a) above and from date of filing suit in respect of (b), (c) and (d) above till payment in full.

(g) Respondent to pay costs of the suit.

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

M/s. Chepngetich for Claimant

Chrispo – Court Clerk